IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6366 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANACHAND K PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA for Petitioners

MR.H.C. PATEL A.G.P. for Respondent No.1, 2, 3.

SERVED BY AFFIX.-(R) for Respondent No. 4

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 22/02/2001

ORAL JUDGEMENT

1. The petitioners had been appointed as Cooks on daily wages by District Backward Class Welfare Officer, Palanpur. Their case is that they were appointed against

clear vacant posts after their names were called from the employment exchange and after they were called for interview and selected by the selection committee, their list of appointment shows that they were appointed in accordance with the approval granted by the Director. It is stated that according to the petitioners when a joint representation was made by them and other persons for making them permanent and paying them salary in the time scale their services were terminated pursuant to the circular dated 6.4.1994, issued by the Director Social Welfare Department. The petitioners thereupon filed this petition challenging their termination.

2. No Affidavit-in-reply has been filed.

3. It appears that other employees whose services were sought to be terminated pursuant to the said circular dated 6.4.1994 had filed Special Civil Application No.12243 of 1994 which was allowed by Kundan Singh, J by his judgement dated 6.4.1994. The learned single Judge has held as follows in para 5 and 6 of his decision;

"5. The appointment of the petitioners was not subject to any condition of availability of any regular employee. The petitioner and other employees were appointed on clear vacant posts by selection committee and no order for terminating the services of the petitioners and other employees can be passed. This Court protected the petitioner's service by the interim order dated 27.10.1994 directing the respondents not to terminate services of the petitioner.

6. Learned counsel for the State could not justify the actions of the respondent Director which are prima-facie illegal and not sustainable in the eye of law at all. The order dated 21st July, 1992 was passed after considering the circular of the Director dated 1.4.1992 and day work (rojkam) of District Recruitment Committee dated 25th, 26th 27th and 28th of May, 1991 and the Resolution of the Finance Department dated 18.6.1992. By that order, the petitioners and other employees were appointed on the post mentioned in the circular dated 1.4.1992

as daily wager till approval of the Director. But the respondent - Director has not passed the order approving the appointment of the petitioners and other employees. Therefore they could not be regularised.

I have given anxious thought to the submissions made on behalf of the parties. It is a fault on the part of the respondent - Director and in case services of the petitioners and other employees were satisfactory their services could not have been terminated, It is not stated by the learned counsel for the State that the services of the petitioners were not satisfactory hence their services were liable to be terminate. The services of the petitioners and other employees were subject to the condition that they will be appointed as daily wager till approval of the respondent - Director. The respondent Director instead of approving and regularising the services of the petitioners and other employees, passed the order directing the Subordinate Authorities to terminate the services of the petitioners and other employees who claimed for regularisation of their services and giving them time scale grade salary. The petitioners are still working under the protection of the Interim order passed by this Court on 27.10.1994. On the face of it, the order of the director is arbitrary, illegal and not sustainable in the eye of law."

4. It also appears that the Commissioner, Adi Jathi, Gandhinagar, has issued an order dated 21.12.1999 complying with the said decision and giving appointment to the petitioners in the said case on the terms stated in the said order. It is not in dispute that the case of the present petitioners is similar to that of the petitioners in Special Civil Application No.12243 of 1994. In the said decision the impugned order of the Director was held to be arbitrary, illegal and not sustainable in the eye of law. Hence the present petition is allowed. The termination of the petitioners' service is set-aside and they are ordered to be

reinstated. The respondents are directed to regularise the service of the petitioners in the same manner as was done in the case of the petitioners in Special Civil Application No.12243 of 1994. It appears that there was delay on the part of the petitioners in filing the present petition. Though their services were terminated in May, 1994, they did not file this petition till March, 1995 and even thereafter the petition was moved for admission only in December, 1995. When the petition came up for admission on 13.12.1995, the learned counsel for the petitioners sought time to explain delay in filing the petition and thereafter additional affidavit was filed. Rule was issued on 16.2.1996. In the circumstances, it will be appropriate to direct the payment of back wages from the date of service of notice of Rule on the respondent. Back wages shall be paid accordingly. Rule made absolute accordingly. No costs.

(M.C. Patel, J).

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